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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 126,330	07/31/1998	GARY D SHARP	CLNK-1P6	8797

7590 10/03/2002
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EXAMINER

PARKER, KENNETH

ART UNIT	PAPER NUMBER
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2871

DATE MAILED: 10/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/126,330

Applicant(s)

SHARP, GARY D

Examiner

Kenneth A Parker

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-101 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-101 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s): ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

Election/Restriction

- I. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - A. modulators with chemical bonding 70-73, 78-81, 90-93, 98-99 classified in class 156.
 - B. modulators with reflector 49-57, classified in class 349, subclass 113.
 - C. modulators with stack only mode detail 6-16, 19-37, 46, 65-66, classified in class 345.
 - D. modulators with stack only mode detail and chemical bonding 74-77 and 94-97, classified in class 345.
 - E. modulators with reflector and chemical bonding, classified in class 156.

The generic claims will be examined with any election 1-5, 17-18, 38-45, 47-48, 58-64, 67-69.

The inventions are distinct, each from the other because of the following reasons:

Inventions B and A are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(e)). The

subcombination can be employed in transmissive devices, and the combination of group can be performed with adhesives instead of chemical bonding.

Inventions A to C are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). Here, the subcombination can be employed with out the solvents for adhesive bonding, and the combination can be driven in other than stack only mode.

Inventions B (and E) to C (and D) are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). Here, the subcombination can be employed with out reflector, and the combination can be driven in other than stack only mode.

Inventions E and D are related to A-C as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the

subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). For any subcombination, a detail of the combination is missing, and the claims to the groups of a subcombination with the missing detail of each are evidence claims that the combination does not rely upon the specific details of either of the subcombination for its patentability and that each of the subcombination claims does not require the element of the combination for patentability. For example, claims of group E provide evidence that group B and E are patentably distinct. See 806.05(a):

Where a combination as claimed does not set forth the details of the subcombination as separately claimed and the subcombination has separate utility, the inventions are distinct and restriction is proper if reasons exist for insisting upon the restriction: i.e., separate classification, status, or field of search. This situation can be diagrammed as combination ABbr ("br" is an abbreviation for "broad"), and subcombination Bsp ("sp" is an abbreviation for "specific"). Bbr indicates that in the combination the subcombination is broadly recited and that the specific characteristics set forth in the subcombination claim Bsp are not set forth in the combination claim. Since claims to both the subcombination and combination are presented and assumed to be patentable, the omission of details of the claimed subcombination Bsp in the combination claim ABbr is evidence that the patentability of the combination does not rely on the details of the specific subcombination.

2. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and the substantial non-overlapping searches, restriction for examination purposes as indicated is proper.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, and the substantial non-overlapping searches, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kenneth Parker whose telephone number is (703) 305-6202. The fax phone number for this Group is (703) 308-7726. Any inquiry of a general nature or relating to the status of this application or preceding should be directed to the Group receptionist whose telephone number is (703) 308-0956.
October 1, 2002



KENNETH ALLEN PARKER
PATENT EXAMINER
GAU 2871